

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

DATE: September 30, 2010

JUDGE
LEONARD DAVIS

REPORTERS: Shea Sloan & Judy Werlinger

LAW CLERKS: Kori Anne Bagrowski

MIRROR WORLDS, LLC V APPLE, INC.	CIVIL ACTION NO: 6:08-CV-88 JURY TRIAL - DAY 4
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ATTORNEYS FOR PLAINTIFFS	ATTORNEY FOR DEFENDANT
Ken Stein (Strook & Stroock & Lavan) Ian Dibernardo (Strook & Stroock & Lavan) Alex Solo (Strook & Stroock & Lavan) Joe Diamante (Strook & Stroock & Lavan) Otis Carroll (ICK Law Firm) David Gelernter, Inventor	Jeff Randall (Paul Hastings Janofsky & Walker) Allan Soobert (Paul Hastings) Christian Platt (Paul Hastings) Bud Tribble, Client Representative

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:00 am

ADJOURN: 6:30 pm

TIME:	MINUTES:
9:00 a.m.	Trial resumed. Jury seated in the courtroom.
	Mr. Randall calls NITIN GANATRA to the witness stand. Mr. Carroll asked for times for the parties. Court advised plaintiff has used 9:50 and the defendant has used short of 8 hours.
	Witness sworn by the Clerk. Direct examination of Mr. Ganatra By Mr. Randall.
	Mr. Randall passed the witness. Cross examination of Mr. Ganatra by Mr. Stein.
	Mr. Stein passed the witness. No further questions of this witness.
	Mr. Soobert called JOHN HORNQVIST to the witness stand. Witness sworn by the clerk.
	Direct examination of Mr. Hornqvist by Mr. Soobert.
	Mr. Soobert passed the witness. Cross examination of Mr. Hornqvist by Mr. Stein.

DAVID J. MALAND, CLERK

FILED: 9.30.2010

BY: Rosa L. Ferguson, Courtroom Deputy

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TIME:	MINUTES:
	Mr. Stein passed the witness. No further questions of this witness.
	Mr. Randall called PAVEL CISLER to the witness stand. Witness sworn by the Clerk.
	Direct examination of Mr. Cisler by Mr. Randall.
	Mr. Randall passed the witness. Cross examination of Mr. Cisler by Mr. Stein.
	Mr. Stein passed the witness. Redirect examination of Mr. Cisler by Mr. Randall.
	Mr. Randall passed the witness. No further questions of this witness.
	Mr. Soobert called KEVIN TIENE to the witness stand. Witness sworn by the Clerk.
	Direct examination of Mr. Tiene by Mr. Soobert.
	Mr. Soobert passed the witness. Cross examination of Mr. Tiene by Mr. Diamante.
	Mr. Diamante passed the witness. No further questions.
	Mr. Randall will call Randy Prager by video deposition and gave the Court the designated times.
	Court addressed the jury and will recess them until 10:45 am.
10:30 am	Court in recess.
11:00 a.m	Trial resumed. Jury not present in the courtroom.
	Court addressed the parties regarding time. Mr. Randall addressed the Court regarding time. Court inquired of Mr. Carroll if their time was correct. Mr. Carroll responded.
	Court asked for Jury to be brought in. Jury seated in the courtroom.
	Mr. Randall will call RANDY PRAGER by Video Deposition. Video played for the jury.
	Mr. Soobert called PETER LUCAS to the witness stand. Witness sworn by the Court.
	Direct examination of Mr. Lucas by Mr. Soobert.
	Mr. Soobert passed the witness. Cross examination of Mr. Lucas by Mr. Stein.
	Mr. Stein passed the witness. Redirect examination of Mr. Lucas by Mr. Soobert.
	Mr. Soobert passed the witness.
12:00 pm	Court in recess until 12:30 pm.
12:40 pm	Trial resumed. Jury not present in the courtroom.
	Court advised the parties that it is denying the Defendant's Motion regarding Waiver. And the Court grants a directed verdict as to the 2 claims, 16 & 18, of the '427 patent.
	Court asked Jury to be brought in. Jury seated in the courtroom.
	Court asked counsel to approach. (Bench Conference held).

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TIME:	MINUTES:
	Mr. Randall called MARK LANSDALE by Video Deposition. Video played for the jury.
	Mr. Soobert called ED BELOVE to the witness stand. Witness sworn by the Clerk.
	Direct examination of Mr. Belove by Mr. Soobert.
	Mr. Soobert passed the witness. Cross examination of Mr. Belove by Mr. Stein.
	Mr. Stein passed th witness.
	Mr. Randall called CHRIS HATCHELL by Video Deposition. Video played to the Jury.
	Mr. Randall called NANCY SILVER by Video Deposition. Video played to the Jury.
	Mr. Soobert called RON BAECKER to the witness stand. Witness sworn by the Clerk.
	Mr. Soobert passed the witness. Cross examination by Mr. Cantine.
	Mr. Cantine passed the witness. No further questions of this witness.
	Mr. Randall will be calling Dr. Feiner.
2:10 pm	Court in recess for 15 minutes.
2:25 pm	Trial resumed. Jury seated in the courtroom.
	Mr. Randall called DR. STEVE FEINER to the witness stand. (Witness previously sworn).
	Direct examination of Dr. Feiner by Mr. Randall.
4:10 pm	Mr. Randall passed the witness. Court excused the jury until 4:25 pm
	Jury not present in the courtroom. Court addressed the parties. Plaintiffs have 1:05 left and the Defendants have 32-33 minutes of time left.
	Court will hear objections to the charge immediately after the evidence today.
4:20 pm	Court in recess.
4:30 pm	Trial resumed. Jury seated in the courtroom.
	Direct examination of Dr. Feiner by Mr. Stein.
	Mr. Stein passed the witness. No further questions of this witness.
	Mr. Randall called DR. KEITH UGONE to the witness stand. Witness previously sworn.
	Direct examination of Dr. Ugone by Mr. Platt.
	Mr. Platt passed the witness. Cross examination of Dr. Ugone by Mr. Diamante.
	Mr. Diamante passed the witness. No further questions of this witness.

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TIME:	MINUTES:
	Mr. Randall offered Defendant's List of Exhibits to be Admitted on Thursday, September 30, 2010, Marked as Defendant's Exhibit List #2, and without objection, exhibits admitted. <u>Defendant's Exhibit List #2</u> lists Defendant's Exhibits #6, 8-10, 29-36, 43, 51, 79, 82, 86-91, 96, 100-116, 123-124, 126, 128, 130, 131, 133, 135, 149, 152, 153-159, 161-165, 168, 170, 174, 181, 184, 193, 197, 203, 212, 216-218, 234, 235, 257-262, 266, 267, 272, 273, 279-282, 284, 286-289, 291, 292, 294, 297, 310, 318, 328, 331, 338-341, 346, 352-355, 357, 360, 366, 373, 376, 385, 387-389, 392-400, 415, 418-420, 424, 429-437, 440-442, 445, 449, 450, 453, 459, 461-463, 466-472, 474-481, 483-485, 492, 495, 497, 500-505, 508-510, 516, 517, 519-526, 528-532, 554, 555, 560, 562, 569, 572, 573, 575, 583-590, 592, 595, 608, 609, 611, 614, 616-619, 621-625, 628-630, 632-634, 636, 637, 639, 641, 643, 652, 660-662, 666, 668, 671, 673, 678, 686, 690, 692-696, 698, 712, 713, 723, 728, 758-760, 764, 769, 770, 774, 778, 779, 792, 795, 803, 806, 814, 815, 817, 818, 820, 821, 826, 829, 837-839, 846-849, 851, 852, 855, 860, 861, 872, 873, 877-879, 882, 888, 889, 916, 917, 921-925, 930, 951, 957, 965, 966, 969, 978, 983, 994, 1006, 1007, 1010-1017, 1019, 1020, 1022, 1023, 1025, 1030, 1032, 1037, 1039-1042, 1044-1046, 1048, 1049, 1051-1055, 1057, 1058, 1062, 1063, 1065, 1067, 1068, 1071, 1074, 1076, 1078-1096, 1106, 1110, 1112, 1114, 1117, 1118, 1123-1125, 1127, 1129, 1130, 1132, 1134.
	DEFENDANT RESTS. Plaintiff will present rebuttal testimony.
	Mr. Dibernardo calls JOHN LEVY to the stand. Witness previously sworn.
	Direct examination of Dr. Levy by Mr. Dibernardo.
	Mr. Dibernardo passed the witness. Cross examination of Dr. Levy by Mr. Randall.
	Mr. Randall passed the witness. No further questions of this witness.
	Mr. Carroll called WALT BRATIC to the witness stand. Witness previous sworn.
	Direct examination of Mr. Bratic by Mr. Carroll.
	Mr. Carroll passed the witness. No further questions of this witness.
	Court clarified with the Defendant's their tendered Exhibits Lists. Court stated it previously referred to the last list admitted as Defendant's Exhibit List #3, but should be Defendant's Exhibit List #2. Mr. Randall clarified that it was #2.
	Mr. Carroll offered Plaintiff's List of Exhibits Admitted on September 27-30, 2010, and it was Marked as Plaintiff's Exhibit List #4, and without objection, exhibits admitted. <u>Plaintiff's Exhibit List #4</u> lists Plaintiff's Exhibits #1, 6, 11, 21, 37, 40, 43, 60, 69, 83-89, 91, 103, 109, 110, 113-119, 127, 130, 131, 138-141, 144, 148, 149, 156, 161, 191-193, 198, 210-212, 220, 221, 268, 276, 278, 298, 313, 336, 338, 344, 383, 386-392, 395, 437, 503-522, 669, 696, 730, 731, 733, 893, 970, 976, 983, 991, 999, 1028, 1136, 1150-1153, 1183, 1184, 1186, 1189-1191, 1214, 1647, 1659, 1655, 1660, 1676, 1684, 1812, 1821, 1952, 1994-1997, John Levy Direct Demonstrative Slides, Walter Bratic Direct Demonstrative Slides.
	Court addressed the Jury that the evidence is closed. Court recessed the Jury until 9:00 a.m. tomorrow. Court reminded the Jury of the Court's instructions and jury excused from the Courtroom.
	Jury not present in the courtroom.

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TIME:	MINUTES:
	Mr. Carroll addressed the Court on the Verdict Form, Page 2, under Question 2, and the language "Otherwise skip to question 4." should be taken out since there is not a question 4. Court will remove.
	Mr. Randall addressed the Court on Verdict Form 1A and requests that the question be broken down by claim and product. Mr. Stein responded. Mr. Court overruled objection..
	Mr. Randall addressed the Court on Question #2, and requests that it be broken down by claim. Mr. Randall addressed the Court on the paragraph below on the "yes or no" and requests to change "asserted" to "infringed" and take out "otherwise skip to question 4. Court will take that out.
	Mr. Randall addressed the Court on the date in Question 3 and requests the date damages to begin. Court overruled.
	Mr. Randall addressed the Court as to the first request made and pointed out that the Mac OS Tiger only applies to certain claims. Court inquired if the breakdown is to claims or claims and devices. Mr. Randall responded as to both. Mr. Stein responded. Court will take under advisement.
	Mr. Randall addressed the Court on the Charge, Pg 4, #2 where it refers to "sell, sell or import products" and requests an instruction that iPhone , iPod and iPad no longer an issue. Mr. Randall requested an instruction that Apple is not going to present evidence on infringement of the Piles patent, and the parties are not going to present argument on the -- those other products, iPods, iPhones, iPads.. Mr. Carroll responded. Court proposed some language. Mr. Carroll needs a minute to confer with counsel. Mr. Randall does not object.
	Mr. Randall addressed the Court on the next line, page 4, and moves to Dismiss on the '227 Claims 13 & 22, and under the '313, Claims 1, 2, 3, 9 & 11. Mr. Randall addressed the Court and presented argument. Mr. Stein responded. Mr. Randall moving to dismiss the method claims. Mr. Stein responded. Court will take a closer look. Mr. DiBernardo addressed the Court. Court will take a closer look, but for now, is denying it.
	Mr. Carroll addressed the Court and is fine with Court's proposed instruction as addressed above.
	Mr. Randall addressed the Court and objects that the clear and convincing evidence standard should not apply to the art that was not before and considered by the PTO. Court overruled objection.
	Mr. Randall addressed the Court and objects to presumption of validity attaching to the claim -- the prior art that has not been presented. Objection noted and overruled.
	Mr. Randall addressed the Court and objects to the willfulness instruction to the extent it does not allow the jury to consider evidence regarding the re-exam proceedings. Court overruled.
	Mr. Randall addressed the Court re: under reasonable royalty definition on Pg 24, and requests to include fact that royalty that may be due can be a lump sum payment. Mr. Carroll responded. Court will insert "it may be a running or lump sum royalty". Mr. Carroll asked to add "or a combination of the two." Court will insert.

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TIME:	MINUTES:
	Mr. Randall addressed the Court on the Pages 28-31, there are some unasserted or dismissed claims. Mr. Stein responded. Mr. Randall referenced under Pg 28, "stream" and stated that Claims 20-25, should be 1 & 25. Mr. Stein looks fine.
	Mr. Randall referenced "glance view" under '427, claim 16 & 32 should be removed. Mr. Mr. Randall corrected and only 32 should come out.
	Mr. Randall referenced "receding, foreshortened stack" under the '427 , Claim 10 should come out.
	Court asked parties to meet and confer immediately after Court adjourns and give an edited version of the claims to staff before they leave.
6:30 pm	Court in recess until 9:00 a.m.